85-2171

NO.

Supreme Court, U.S.
FILED
JUN 12 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES
October Term 1985

Re:

HENRY G. BARTSCH
and
WILMA M. BARTSCH — Petitioners

vs

BERT H. COOPER
and
MARY A. COOPER
et al — Respondents

PETITION FOR WRIT OF MANDAMUS TO THE SUPREME COURT OF THE UNITED STATES

HENRY G. BARTSCH
WILMA M. BARTSCH
pro se
3601 34th Street, NW
Washington, D.C.
Tele. 362-8081

42 pp

QUESTIONS PRESENTED

.1. Is the 180-day period for Pretrial Discovery ordained by Superior Court of D.C. Rule 26 of Civil Procedure a privilege protected by Amendment XIV, section (1) of the U.S. Constitution?

.2. Does the Superior Court of D.C. Order of the Hon. Judge John F. Doyle filed March 22, 1985 in Petitioners' Civil Action 10791-84 (with five days added for service by U.S. Mail) -- supplemented by an unserved, only recently discovered order signed by the Hon. Judge George W. Mitchell and purporting to bear the date "May 3, 1985" -- constitute a 30-day "abridgement" of Petitioners' privilege of Discovery ordained by that Court's Rule 26 of Civil Procedure?

.3. Did the failure and refusal of Superior Court Judge Paul F. McArdle to restore the aforesaid 30-day abridgement at Pretrial Conference held October 22, 1985 under that Court's Rule 16 of Civil Procedure, constitute "enforcement" of the aforesaid orders of Judges Doyle and Mitchell proscribed under Amendment XIV, section (1) of the U.S. Constitution?

.4. Does the Official Record in Civil Action 10791-84, including the summarily-denied Interlocutory Petition No. 85-451 to the District of Columbia Court of Appeals, evidence exhaustion of Petitioners' opportunities to secure relief from said Orders of the Superior Court of the District of Columbia prior to application for a Writ of Mandamus of the Supreme Court of the United States?

.5. Is the cryptic October 22, 1985 file wrapper entry in Civil Action 10791-84:

"Pl's Request for Dismissal Granted" construable as a "Voluntary Dismissal" under Superior Court of D.C. Rule 41 of Civil Procedure?

.6. Was the otherwise undocumented October 22, 1985 "file wrapper order" of the Hon. Pretrial Judge Paul F. McArdle, which terminated your Petitioners' right to Jury Trial of the Issues in Civil Action 10791-84 of the Superior Court of the District of Columbia, violative of Amendment VII of the U.S. Constitution?

.7. Was the March 11, 1986 Summary Dismissal of your Petitioners' Appeal 86-59 by the **District of Columbia Court of Appeals** on the unsubstantiated-by-any RECORD conclusions of Appellees' Counsel

Stephen Daniel Keeffe that the issues presented on appeal were (1) "Frivolous" and (2) barred by "Voluntary Dismissal", an appellate-court deprivation of Due Process and Equal Protection of the Laws proscribed by Amendment XIV, section (1) of the U.S. Constitution?

.8. In the face of the November 5, 1984 Superior Court of D.C. Joinder of Issue on the pleaded assertion of the Appellant Wilma Bartsch's right to be identified by her married name in any posted handbill critical of her mode of cohabitation with her husband-appellant Henry Bartsch:

Is the aforesaid Order of the District of Columbia Court of Appeals precluding jury trial of that Issue under the by-that-Court-substituted caption:

"WILMA A. MILLER, ET AL.,

Appellants,

v. CA 10791-84

BERT H. COOPER, ET AL.,

Appellees."

not only an Insult, but Void?

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STATEMENT OF FACTS

On September 4, 1984, the Petitioners Wilma and Henry Bartsch filed a Civil Action No. 10791-84 in the Superior Court of the District of Columbia against the Respondents Bert H. Cooper and Mary A. Cooper asking damages for the Coopers' public posting and publishing of a libelous handbill. Jury Trial was demanded and the $120 fee paid.

On October 18,1984, the Respondents filed Answer in the form of a general denial of all allegations of the Complaint and a "demand for strict proof" of Petitioners' marriage.

On November 5, 1984, the Court advised the Petitioners (Appendix "C") that the case was at issue, and that the privilege of Pretrial Discovery would, under the Court's Rule 26 C(d),

terminate 180 days thereafter.

Pursuant to notice without subpoena, Plaintiffs were summoned by the Respondents' attorney, Stephen Daniel Keeffe, to appear and stand oral examination by him in his law office. Petitioners duly and willingly appeared, but were advised by attorney Keeffe that each would have to stand examination out of the presence of the other. To such stricture Petitioners refused to consent, and attorney Keeffe withdrew his condition, only to later advise Petitioners (before conclusion of the direct examination of Wilma Bartsch) that neither she nor her husband would be permitted to cross examine in clarification of answers given on Direct. With this condition, and in the face of abject refusal to withdraw that stricture, plaintiffs

announced on the record that they would no further submit to examination on Direct, and they departed from attorney Keeffe's office, challenging the proceeding as fatally flawed and a nullity. Attorney Keeffe, in response, threatened Petitioners with assurance that he would seek imposition of sanctions by the Court for defiance of "his" order.

When no application for Court imposition of sanctions was forthcoming for 12 days, Petitioners moved (on January 3, 1985) for a Directive of the Court in the premises. That Motion was ignored by the Court for <u>eighty days</u> <u>until March 21, 1985</u>. and on March 22, 1985 was summarily dismissed by the herein-named Respondent Judge John F. Doyle without explanation or discernible rationale.

More significantly, the named-

respondent Judge John F. Doyle, by U.S. Mail, served Order (Appendix "D") upon your Petitioners to discontinue conducting oral examination of the last four (4) of the eight handbill signatories (including the Respondents Bert H. and Mary A. Cooper) for a period of thirty days (March 27 through April 26, 1985).

Collaterally: The District of Columbia Court of Appeals subsequently summarily denied, **without opinion**, a Petition for Writ of Mandamus praying relief from Judge Doyle's thirty-day abridgement of Petitioner's 180-day period for Discovery. (Appendix "E")

To assure that Judge Doyle's 30-day "Stet" Order be -- unquestionably -- an abridgement of the Petitioners' period for Discovery, Defendants' attorney Keeffe appears to have, in Chambers,

obtained a never served Order from Superior Court Judge George W. Mitchell that there be no further discovery by Plaintiffs after May 8, 1985. (Appendix F and G)

(It is deemed unnecessary to show, item by item, all the of-record-futile attempts of Petitioners to conduct oral examination of the Respondents and the two remaining cosignatories to the handbill; and the specific tactics employed by the Respondents' Attorney to block such oral examination. Petitioners have a Superior Court Certified Record of proceedings in its Civil Action 10791-84 which they can provide for this Court, should the Court deem same appropriate to consideration of this Petition.)

In the expectation of relief from the abridgement of Discovery by appeal to

the Pretrial Judge under the suggestion of the Court's Rule 16 of Civil Procedure, Petitioners pointed out that the continuing deprivation of opportunity to examine Bert and Mary Cooper and others, coupled with the uninformative general denial constituting their Answer to the Complaint, rendered it impossible to name any witnesses other than impeachment witnesses (expressly exempted from the requirement of pretrial listing). The response of the Pretrial Judge, Hon. Paul F. McArdle, was a summary conclusion that your Petitioners were "in default", and their Complaint seeking jury trial was subject to dismissal for willful non-compliance with Rule 16.

Similarly "mooted" was the abortion of Petitioners' objection to the Respondents' filing of no pretrial statement whatever in compliance

with the "at-least-5-day-prior-to-conference" filing and service of such, mandated by the Court's Rule 16.

Considered in the light of the Pretrial Ruling of Default by Petitioners: this default by the Respondents can leave no doubt of pretrial denial of equal protection and due process vouchsafed by Amendment XIV, Section 1 of the U.S. Constitution.

To climax the aforesaid Pretrial Conference, the herein named Respondent Pretrial Judge Paul F. McArdle ruled Petitioner Henry Bartsch's pro se protests as a "Request for Dismissal" under the Court's Rule 41 of Civil Procedure.

Petitioners sought, but could not obtain a transcript of the less than 10-minute conference conducted by the Res-

pondent Judge Paul F. McArdle in his chambers. No reporter or recording was provided thereat.

Petitioners are advised, by a letter in the file of their Appeal No. 86-59 in the District of Columbia Court of Appeals, that that Court's Record of documents and Proceedings is assembled and immediately available for transmission to this Court.

Those papers will show that Petitioners have complied with every requirement of the D.C. Court of Appeals; that the Court declined to receive and consider the record developed in Civil Action 10791-84 in the Superior Court of the District of Columbia; that the Appeal was dismissed without findings of fact, conclusions of law, or a discernible rationale; and that Petitioners were

denied any conference whatever under that Court's newly ordained Rule 7A of Civil Procedure.

ISSUES

Under the circumstances presented in the foregoing Statement of Facts:

.1. The Petitioners have been denied Constitutionally guaranteed Due Process and Equal Protection of the Laws;

.2. The failure of the District of Columbia Court of Appeals to entertain the appeal taken in its case No. 86-59 is a deprivation of Petitioners' right to have Judicial Review and is clearly repugnant to Amendment XIV, section (1) of the Constitution of the United States.

JURISDICTION

The Supreme Court of the United States is endowed with plenary authority and discretion, under Title 28, Section 1651(a) of the United States Code, to

grant relief from unconstitutional proceedings in the Congressionally created Courts of the District of Columbia.

RELIEF SOUGHT

Petitioners pray:

.1. Issuance of an Order to the Honorable Julia Cooper Mack, Honorable Theodore R. Newman, Honorable Judith W. Rogers, Associate Judges of the District of Columbia Court of Appeals

and to the

Honorable John F. Doyle, Honorable George W. Mitchell,

and Honorable Paul F. McArdle Associate Judges of the Superior Court of the District of Columbia,

each and all,

to show cause, if any there be, why the 30-day abridgement of Petitioners' 180-day period for conduct of Pretrial discovery should not be forthwith restored; or, failing same, why an Extraordinary Writ of Mandamus should not issue to said Judges forthwith directing restoration of said 30-day abridgement of Plaintiff's' 180 day right to Pretrial Discovery.

and

Petitioners pray for issuance of an Order directed to Stephen Daniel Keeffe, a member of the Bar of this Court, to cooperate in securing to Petitioners fair opportunity to conduct lawful oral examination of his clients Bert H. Cooper and Mary A. Cooper and such other persons as may have information and documentary

material germaine to the issues in Civil Action 10791-84 in the Superior Court of the District of Columbia.

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

In Re:

HENRY G. BARTSCH

and

WILMA M. BARTSCH

Petitioners

PETITION FOR WRIT OF MANDAMUS

.1. Your Petitioners Henry G. Bartsch and Wilma M. Bartsch, under the provisions of Title 28, Section 1651(a) of the United States Code, and Rule 21(a) of the Federal Rules of Appellate

procedure, respectfully petition this Honorable Court for issuance of an Order to Show Cause, if any there be, why the

Honorable Julia Cooper Mack,
Honorable Theodore R. Newman,
Honorable Judith W. Rogers,
Associate Judges of the
District of Columbia
Court of Appeals
and the
Honorable John F. Doyle,
Honorable George W. Mitchell,
and Honorable Paul F. McArdle
Associate Judges of the
Superior Court of the
District of Columbia

should not, insofar as it be within their respective individual or collective authority, to forthwith aid in restoration of Petitioners' full 180-day right

to discovery in Civil Action 10791-84 of the Superior Court of the District of Columbia, and

.2. Absent acquiesence in such restoration, or good cause shown, Petitioners pray: Issuance of an Extra-ordinary Writ of Mandamus directing said named-respondent Judges, their successors or alternates, to rescind the 30-day abridgement of Plaintiffs' Superior Court ordained right to a 180-day period for Pretrial discovery;

and

.3. Petitioners pray for issuance of an Order directed to Stephen Daniel Keeffe, a member of the Bar of this Court, to henceforth cooperate in securing to Petitioners fair opportunity to conduct lawful oral examination of his clients, respondents Bert H. Cooper and

Mary A. Cooper, and such other persons as may have information and documentary material germaine to the issues in Civil Action 10791-84 in the Superior Court of the District of Columbia.

REASONS FOR ISSUANCE OF THE ORDER TO SHOW CAUSE; OR FOR ISSUANCE OF A WRIT OF MANDAMUS

It is within the Constitutional and Statutory Authority and duty of the Supreme Court to correct abuses of judicial authority in Courts created and existing under Congressional Enactment.

It is submitted that the denial of relief from the herein-complained-of judgments of the District of Columbia Court of Appeals and the Superior Court of the District of Columbia made on conjecture unsupported by findings of fact and conclusions of law, would

undermine not only the respect of the Public, but of the Bar itself.

CONCLUSION

Your Petitioner, Henry G. Bartsch is 80 years of age. The sacrifices he has had to make to get this matter to the attention of this Court have been far in excess of his physical capacity to long endure, even for the security and good name of his dedicated wife and co-petitioner, Wilma M. Bartsch, a long-time contractor-servant of the U.S. District Court for the Eastern District of Maryland; the Office of the U.S. Attorney for the District of Columbia; the Interior Department; the Treasury Department; the Library of Congress; the Securities and Exchange Commission; and numerous other Agencies of the U.S.

U.S. Government and the District of Columbia Government, over a span of more than 35 years. Even the record of Argument before this Court in Sweet vs. Texas many years ago, will confirm existence of a letter of commendation for her distinguished service to this Court in an Emergency where the regular reporter(s) (2) were unavailable.

Respectfully submitted,

Henry G. Bartsch

Henry G. Bartsch

and

Wilma M. Bartsch

Wilma M. Bartsch
3601 34th Street, NW
Washington,D.C.20001
Tele. 362-8081

CERTIFICATE OF SERVICE

I, Wilma M. Bartsch, hereby certify that exact copies of the foregoing Petition for Writ of Mandamus were served by first-class mail, postage prepaid, upon the

Honorable Julia Cooper Mack,
Honorable Theodore R. Newman,
Honorable Judith W.Rogers,
Associate Judges of the
District of Columbia
Court of Appeals

and upon the

Honorable John F. Doyle,
Honorable Ronald P.Wertheim,
Honorable George W. Mitchell,
Honorable Paul F. McArdle
Associate Judges of the
Superior Court of the
District of Columbia,

at their addresses in the Judicial Bldg. at Indiana Ave. and John Marshall Place. Washington, D.C. 20001,

and upon the Office of the Corporation Counsel of the District of Columbia; 1350 E Street, N.W., Washington, D.C. 20001, and upon

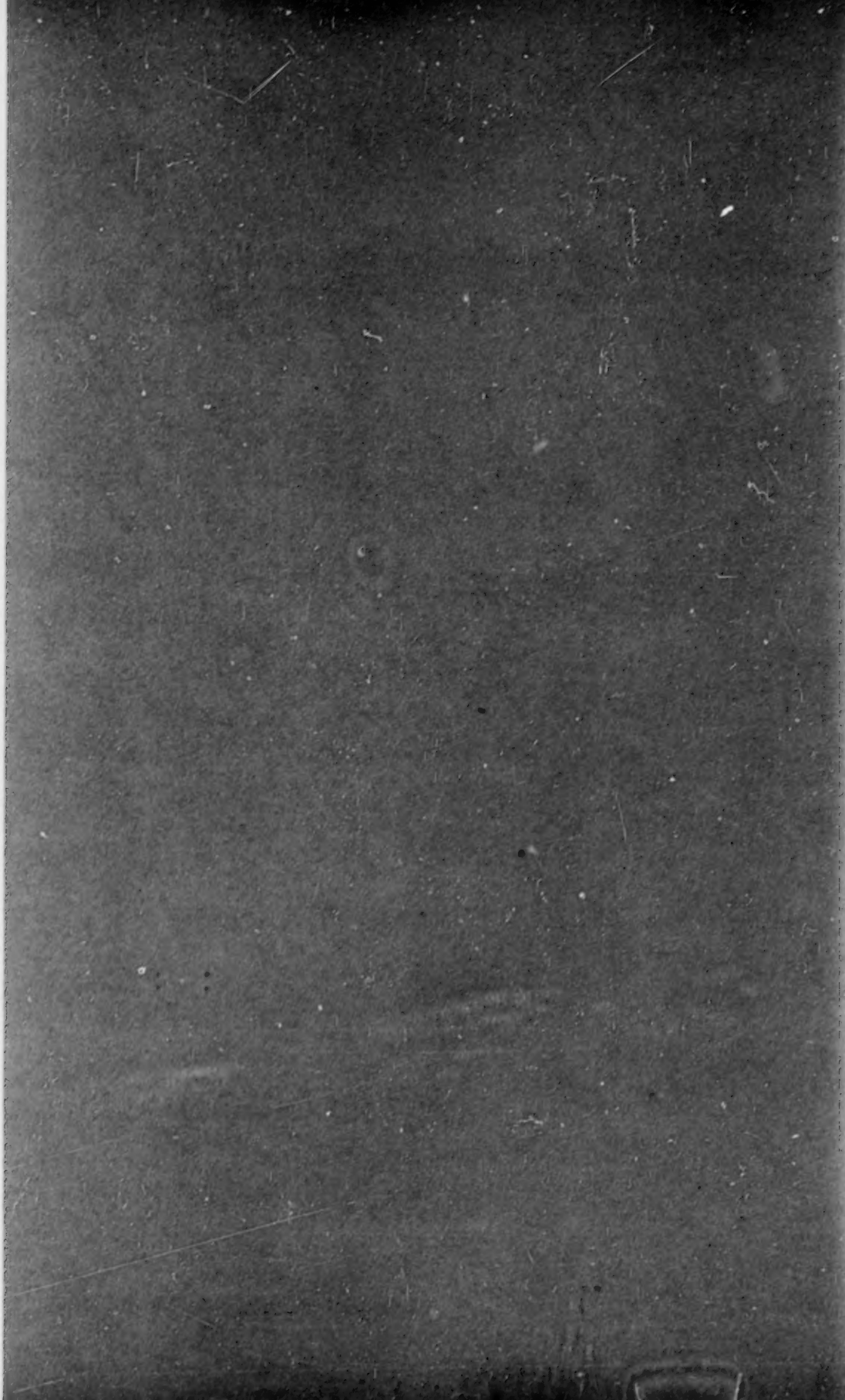
Stephen Daniel Keeffe, Esq.,(Attorney of Record for Respondents Bert H. Cooper and Mary A. Cooper in the proceedings below) 1625 I (Eye) Street, N.W., Suite 815, Washington, D.C. 20006.

on July 3rd, 1986

Wilma M. Bartsch

Wilma M. Bartsch

APPENDICES



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APPENDIX "C"

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil No. 10791-84 Calendar No. 4469-j

BARTSCH ET AL VS. COOPER ET AL

JOINDER OF ISSUE DATE: NOV 5 1984

In accordance with Superior Court Civil Rule 16 and 16-I, the above case is set for PRETRIAL on SEP 6 1985,

at 1:30 M. Failure to appear may result in a default or dismissal of the case. A trial date will be assigned by the Assignment Commissioner immediately after the pre-trial has taken place. Unless it is clearly impractical to do so, trial will be held within six weeks after the pretrial hearing. See SCR Civil Rules 26 and 12-I (amended September, 1980) for time limits on discovery and motions practice.

REPORT TO THE ASSIGNMENT OFFICE

Form CV(11)-1176/Aug. 80
81-P5169

JOSEPH WEST
Assignment Commissioner

APPENDIX "D"

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

CIVIL DIVISION

Filed Mar. 22, 1985

WILMA MILLER BARTSCH
HENRY G. BARTSCH,
Plaintiffs

v. Civil Action No. 10791-84

BERT H. COOPER
MARY A. COOPER
Defendants

ORDER

This matter came before the Court on March 21, 1985 for hearing on the following motions:

1. Plaintiffs' Motion for a Directive Governing the Conduct of Depositions;

2. Defendants' Motion for Dismissal of or, in the alternative, to Compel Answers to Questions of Oral Deposition;

3. Plaintiffs' Motion for an Order to Show Cause;

4. Defendants' Motion for a Protective Order;

5. Defendants' Motion for Summary Judgment;

6. Plaintiffs' Motion to Strike the Defendants' Motions for Summary Judgment and for a Protective Order and for an Order Extending Discovery; and

7. Plaintiffs' Motion to Stay Hearing on Defendants' Motion for Summary Judgment.

Upon consideration of the aforesaid Motions, the Oppositions thereto, the parties' respective points and authorities in support thereof and in opposition thereto,and the arguments of the parties heard in open court, it is this 22 day of March, 1985

O R D E R E D:

1. That the Plaintiffs submit to individual depositions within thirty (30) days of the date of this Order which depositions may be held at the offices of Defendants' counsel;

2. That all other discovery in the instant case be and the same hereby is stayed pending the depositions of Plaintiffs as aforesaid;

3. That the Plaintiffs' Motion for a Directive Governing the Conduct of Depositions be and the same hereby is denied;

4. That Defendants' Motion for Dismissal be and the same hereby is Denied;

5. That the Plaintiffs' Motion for an Order to Show Cause be and the same hereby is Denied;

6. That Defendants' Motion for a Protective Order be and the same hereby is Denied;

7. That Plaintiffs' Motion to Strike the Defendants' Motions for Summary Judgment and for a Protective Order be and the same hereby is Denied;

8. That Plaintiffs' Motion to Stay Hearing on Defendants' Motion for Summary Judgment be and the same hereby is Denied;

9. That Defendants' Motion for Summary Judgment on the ground asserted be and the same hereby is Denied without prejudice to the filing of a further Motion for Summary Judgment on such other grounds as may appear to exist; and

10. That all parties' requests for attorneys' fees and court costs in connection with the aforesaid motions be

the same hereby are Denied.

/s/ John F. Doyle

J U D G E

cc: Wilma Miller Bartsch
Henry G. Bartsch
3601 34th Street, N.W.
Washington, D.C. 20008

Stephen D. Keefe, Esq.
1625 Eye Street, N.W.
Suite 815
Washington, D.C. 20006

APPENDIX "E"

District of Columbia Court of Appeals
500 Indiana Avenue, N.W.
Washington, D.C. 20001

(Filed April 30, 1985)

No. 85-451

WILMA MILLER BARTSCH, et al., Petitioners,

v.

CA20792-84

HONORABLE JOHN F. DOYLE, Respondent.

BEFORE: Pryor, Chief Judge; and Belson, Associate Judge.

O R D E R

On consideration of the petition for writ of mandamus, it is

ORDERED that the petition is denied.

PER CURIAM

Copies to:

Honorable John F. Doyle

Clerk, Superior Court

Ms. Wilma Miller Bartsch
Mr. Henry G. Bartsch
3601 34th Street, N.W.
Washington, D.C. 20008

Stephen D. Keefe, Esquire
1625 Eye Street, N.W.
Suite 815
Washington, D.C.

APPENDIX "F"

LAW OFFICES OF
KEEFFE & HART
1625 "I" STREET N.W., SUITE 815
WASHINGTON, DISTRICT OF COLUMBIA
20006
(202)887-0620

May 7, 1985

Mr. Henry G. Bartsch
Mrs. Wilma Miller Bartsch
3601 - 34th Street, N.W.
Washington, D.C. 20005

Dear Mr. & Mrs. Bartsch:

Please advise this office if you intend to take my clients' deposition on Wednesday, May 8, 1985, the last day for discovery in this case. If I do not hear from you, I will assume you have decided their depositions are unnecessary for your case.

Very truly yours,

/s/ Stephen D. Keeffe
Stephen D. Keeffe

SDK:rb MAILGRAM TO STEPHEN D. KEEFFE, SUITE 815, 1625 EYE STREET, N.W., WASHINGTON, D.C. 20006, TELEPHONE 887-1620:

RESPONSIVE TO THE MAY 7TH-DATED LETTER YOU HAND-DELIVERED INTO MY U.S. MAIL BOX THIS AFTERNOON, BE ADVISED THAT NEITHER WILMA MILLER

BARTSCH NOR HENRY G. BARTSCH HAVE BEEN SERVED WITH AN ORDER OF OFFICIAL ADVICE FROM THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA THAT WE MUST ORALLY EXAMINE YOUR CLIENTS BERT H. AND MARY A. COOPER, AT 11:A.M., MAY 8, 1985.

REGARDLESS OF THAT FACT, BE FURTHER ADVISED THAT I HAVE AN UNALTERABLE PRIOR COMMITMENT WEDNESDAY, MAY 8, 1985, TO MELVIN ANTHONY MARSHALL, ESQ., MY ATTORNEY OF RECORD IN CIVIL ACTION NO. 3027-85, TO DISCUSS WITH HIM AND PREPARE FOR A HEARING IN THAT CASE SCHEDULED FOR THE FOLLOWING MORNING, THURSDAY, MAY 9, 1985, IN THIS COURT.

BE ADVISED, ALSO, THAT I HAVE NOT "DECIDED THAT THEIR (BERT H. AND MARY A. COOPER'S) DEPOSITIONS ARE UNNECESSARY FOR (Y)OUR CASE"; NOR HAS THE COURT SO RULED. YOUR THREATENED ASSUMPTION IS, THEREFORE, CHARACTERISTICALLY ERRONEOUS.

WILMA MILLER BARTSCH
3601 34TH STREET, N.W.
WASHINGTON, D.C. 20008
TELE. 362-8081

APPENDIX "G"

SUPERIOR COURT FOR THE
DISTRICT OF COLUMBIA

(Civil Division)

WILMA MILLER BARTSCH)

)Civil Action No.
10791-84

and)
HENRY G. BARTSCH
3601 34th Street, N.W.)
Washington, D.C. 20008

)

Plaintiffs

)

v.

)

BERT H. COOPER
and)
MARY H. COOPER
3313 Porter Street, N.W.)
Washington, D.C. 20008

Defendants)

ORDER

This matter was presented, on notice, to the Judge in Chambers, to reschedule the depositions of Defendants set for Saturday, May 4, 1985. Upon consideration of Defendants' written

Motion, Points and Authorities together with supporting Affidavit and requested Order, and the file in this case, it is this 2nd day of May, 1985

ORDERED that, the deposition of Defendants be set for May 8,1985 at 11:00 a.m., and it is further

ORDERED that, the discovery in this matter be extended thru May 8, 1985.

SO ORDERED, May 3, 1985.

/s/ George W. Mitchell
Judge, Superior Court for the
District of Columbia

APPENDIX M

District of Columbia
Court of Appeals

No. 86-59 FILED MAR. 11, 1986

WILMA MILLER, ET AL.,
Appellants,

v. CA10791-84

BERT H. COOPER, ET AL.,
Appellees.

BEFORE: Mack, Newman, and Rogers,
Associate Judges.

O R D E R

On consideration of the motion of appellees to dismiss appeal and for award of attorney fees, and the opposition of appellants thereto, it is

ORDERED that the motion to dismiss is granted and this appeal is hereby dismissed.

PER CURIAM.

Copies to:

Honorable Paul F. McArdle

Clerk, Superior Court

Ms. Wilma Miller
3601 34th Street, N.W.
Washington, D.C. 20008

Stephen Daniel Keeffe, Esquire
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Suite 815
Washington, D.C. 20006